

(ii) That a person subject to a presumption of ownership or control under the definition of *Owned or controlled* or *Owns or controls* in § 773.5 of this part, does not or did not in fact have the authority directly or indirectly to determine the manner in which surface coal mining operations are or were conducted, or

(iii) That the violation covered by the violation notice did not exist, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal within the meaning of § 773.15(b)(1) of this part; *provided* that the existence of the violation at the time it was cited may not be challenged under the provisions § 773.24 of this part: (A) By a permittee, unless such challenge is made by the permittee within the context of §§ 773.20 through 773.21 of this part; (B) by any person who had a prior opportunity to challenge the violation notice and who failed to do so in a timely manner; or (C) by any person who is bound by a prior administrative or judicial determination concerning the existence of the violation.

(2) In meeting the burden of proof set forth in paragraph (c)(1) of this section, the person challenging the ownership or control link or the status of the violation shall present probative, reliable, and substantial evidence and any supporting explanatory materials, which may include—

(i) Before the responsible agency—

(A) Affidavits setting forth specific facts concerning the scope of responsibility of the various owners or controllers of an applicant, permittee, or any person cited in a violation notice; the duties actually performed by such owners or controllers; the beginning and ending dates of such owners' or controllers' affiliation with the applicant, permittee, or person cited in a violation notice; and the nature and details of any transaction creating or severing an ownership or control link; or specific facts concerning the status of the violation;

(B) If certified, copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;

(C) If certified, copies of documents filed with or issued by any State, Municipal, or Federal governmental agency.

(D) An opinion of counsel, when supported by (1) Evidentiary materials; (2) a statement by counsel that he or she is qualified to render the opinion; and (3) a statement that counsel has personally and diligently investigated the facts of the matter or, where counsel has not so investigated the facts, a statement that such opinion is based upon information which has been supplied to counsel and which is assumed to be true.

(ii) Before any administrative or judicial tribunal reviewing the decision of the responsible agency, any evidence admissible under the rules of such tribunal.

(d) Following any determination by a State regulatory authority or other State agency, or any decision by an administrative or judicial tribunal reviewing such determination, the State regulatory authority shall review the information in AVS to determine if it is consistent with the determination or decision. If it is not, the State regulatory authority shall promptly inform OSM and request that the AVS information be revised to reflect the determination or decision.

[59 FR 54355, Oct. 28, 1994; 59 FR 61656, Dec. 1, 1994]

PART 774—REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

Sec.

774.1 Scope and purpose.

774.10 Information collection.

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774.17 Transfer, assignment, or sale of permit rights.

AUTHORITY: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

SOURCE: 48 FR 44395, Sept. 28, 1983, unless otherwise noted.

§ 774.1 Scope and purpose.

This part provides requirements for revision; renewal; and transfer, assignment, or sale of permit rights.